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EEOC v. Phoenix Industrial Service, Inc.

Judge Hayden Head

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EEOC v. Phoenix Industrial Service, Inc.

Keywords

EEOC, Phoenix Industrial Service, 2:05-CV-00250, Consent decree, disparate treatment, retaliation, hostile work environment, constructive discharge, race, black, service, employment law, title VII

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

**PHOENIX INDUSTRIAL SERVICE,
INC., and PHOENIX SERVICES,**

Defendant.

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C.A. NO. 2:05-CV-00250

JURY TRIAL DEMANDED

CONSENT DECREE

The Plaintiff, Equal Employment Opportunity Commission (the “Commission” or EEOC”), has alleged that Defendant Phoenix Industrial Service, Inc. and Phoenix Services (collectively “Defendant”) discriminated against Milford Topsy (“Charging Party”) because of his race, Black, and retaliated against him for complaining of harassment in violation of Title VII of the Civil Rights Act of 1964, as amended.

Defendant has denied these allegations and specifically denies engaging in any discriminatory or retaliatory employment practices. Neither the Defendant’s consent to the entry of this Consent Decree nor any of the terms set forth in it shall be construed as an admission by Defendant of any liability of unlawful conduct.

In the interests of resolving this matter, to avoid the expense of protracted litigation, and as a result of having engaged in extensive negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree.

The parties stipulate to the jurisdiction of the Court and waive a hearing and the entry of findings of fact and conclusions of law.

IT IS THEREFORE ORDERED:

1. Defendant contends that it did not engage in any illegal or improper employment practices. As such, Defendant agrees that it will not engage in any employment practices that have the purpose or effect of discriminating against any individual with respect to compensation, terms, conditions or privileges of employment because of an individual's race as prohibited by Title VII of the Civil Rights Act of 1964, as amended, and will not retaliate against any individual or retaliate in any manner against any individual because he or she has made a charge, testified, assisted, or participated in any manner in the investigation by the Commission or court proceeding in connection with this lawsuit

2. This Consent Decree is entered in full and complete settlement of any and all claims raised or which could have been raised arising out of or contained in EEOC Charge No. 36B-2004-00172. This Consent Decree is further entered in full and complete settlement of any and all claims raised or which could have been raised by the EEOC arising out of or contained in Civil Action No. 2:05-CV-00250. The Consent Decree constitutes a complete resolution of all claims that were made by the EEOC against Defendant in this action.

3. The parties stipulate to the jurisdiction of the Court and waive a hearing and entry of findings of fact and conclusions of law.

4. By entering into this Consent Decree, the Defendant has not admitted any contentions regarding the allegations on the merits of this cause of action. Nothing contained in this Consent Decree shall be construed as an admission of liability on the part of the Defendant. By entering into this Consent Decree, the Court has not made any determination with respect to the claims made by the Plaintiff or defenses asserted by Defendant. This Consent Decree is entered with the consent of the parties and does not constitute an adjudication or finding by the Court on the merits of the allegations of the Complaint.

5. Defendant has represented that it has terminated the employment of Raul Reyna and shall not re-employ Raul Reyna in any capacity during the terms of the Consent Decree.

6. Contingent upon Charging Party signing a separate release of all claims against Defendant, and after Defendant has received such release, Defendant agrees to pay the total sum of \$16,000.00 in full and final settlement of the Commission's lawsuit to provide monetary relief to Charging Party. This payment will be made within twenty-one (21) days from the entry of this Consent Decree or Charging Party's execution and delivery to Defendant of a standard release of claims, whichever is later. The Commission shall notify Defendant within seven (7) days of entry of the Consent Decree of the address to which the check to Charging Party will be mailed. A copy of the check disbursed shall be mailed to the Commission's undersigned counsel of record on the same day the check is mailed to the Charging Party.

7. Defendant agrees to segregate all documents related to Charging Party's charge of discrimination and the Commission's lawsuit from Charging Party's personnel file. In response to any request for reference or other inquiry by any potential employer concerning Charging Party, Defendant shall provide only Charging Party's employment dates, confirm his salary range, and either confirm his job title or provide a description of his job duties with Defendant. Defendant shall not reference his charge of discrimination, the EEOC's lawsuit or this Consent Decree.

8. Harassment Policy and Complaint Procedures. Within ninety (90) days from the entry of this Decree, Defendant shall adopt a race harassment policy and complaint procedure that meets the following criteria:

- (a) prohibits discrimination against any employee on the basis of race in violation of Title VII and prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of race in violation of Title VII;
- (b) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is hostile to any employee through acts such as physical/verbal abuse and derogatory comments based on race in violation of Title VII; defines and provides examples of race harassment;
- (c) provides for prompt investigation of race harassment complaints and for prompt action, which is appropriate and effective, to remedy the discrimination; imposes a duty on all Defendant's officers, managers, and supervisory personnel to actively monitor all work areas to ensure compliance with Defendant's race harassment policy;
- (d) encourages all Defendant employees to report any incident and/or complaint of race harassment of which they become aware, regardless of the position held by the harasser, to the person(s) responsible for handling such complaints; and provides assurances

that complainants shall not be subjected to intimidation, harassment and/or retaliation;

- (f) provides that upon the conclusion of Defendant's investigation, the results of the investigation and the remedial actions taken or proposed will be promptly communicated in writing to the complaining party;
- (g) provides for substantial and progressive discipline for violating Defendant's race harassment policy up to and including discharge;
- (h) requires that all employees report incidents of possible race harassment to the person(s) identified by Defendant the person(s) charged with the responsibility for investigating discrimination complaints; and
- (i) provides that Defendant's race harassment policy and complaint procedures be drafted in plain and simple English and Spanish.

9. Defendant shall provide, using an attorney from Feldman & Rogers, L.L.P., a training program to last not less than two (2) hours on employment discrimination, including the law relating to race discrimination, racial harassment and retaliation to all management employees of Defendant. All participants shall be required to sign a registry upon completion of the training. The training shall be conducted within six (6) months of the entry of this Decree.

10. Defendant shall notify the Commission about each training session prior to its commencement. The notice shall indicate the time, place and date of the training. The agenda, the teaching materials and the name of the trainer shall be submitted to the EEOC for approval prior to the training. EEOC shall then have fourteen (14) business days from the date of the receipt of the information to accept or reject the contents of the topic outline. In the event that the EEOC does not approve Defendant's materials,

Defendant shall have ten (10) business days to submit a revised outline and in such an event the Defendant's six (6) month deadline for conducting the training will commence from the date of approval by the EEOC.

11. Following the training, Defendant shall notify the EEOC of the training by indicating when and where the training took place, the duration of the training, and the identity of the trainers and the attendees. A copy of the registry shall be submitted to the EEOC as part of Defendant's reporting obligations. Reports of the training shall be submitted to the EEOC no more than fourteen (14) days following the training. The notification or report shall be submitted to the EEOC at the following address: Rudy L. Sustaita, EEOC Houston District Office, 7th Floor, Houston, Texas 77002.

12. Within fourteen (14) business days after the entry of this Decree, Defendant shall post copies of the Notice attached as Exhibit "A" to this Consent Decree at all its Houston facilities in conspicuous locations easily accessible to and commonly frequented by employees. The Notice shall remain posted for the duration of this Consent Decree. Defendant shall ensure that the postings are not altered, defaced or covered by any other material. Defendant shall certify to the EEOC in writing within fourteen (14) business days after entry of the Decree that the Notices have been properly posted.

13. The EEOC and Defendant shall bear their own costs and attorney's fees.

14. This Consent Decree shall remain in effect for one year from its entry.

Signed on this 15 day of Aug 2006 at Corpus Christi,
Texas.

So ORDERED AND ENTERED this 15 day of Aug, 2006
at Corpus Christi, Texas.


JUDGE HAYDEN HEAD

AGREED:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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